



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



February 7, 2002

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Hong Don Lee
c/o Hong W. Lee
200 Nottingham Square Road
Epping, NH 03042

Re: Administrative Order No. WMD 02-005

Dear Mr. Lee

Enclosed is Administrative Order No. WMD 02-005 issued this date to you as a result of inspections conducted on August 23, 2001, August 28, 2001, October 3, 2001, November 1, 2001, November 28, 2001, and December 18, 2001.

Should you have any questions regarding this order, please contact Cheryl McGary or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator
Waste Management Programs
Department of Environmental Services

CERTIFIED MAIL/RR # 7099 3400 0002 9769 7693

CC DB/File/Order
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Bill Evans, ORCB, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Nottingham, NH



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Hong Don Lee
c/o Hong W. Lee
200 Nottingham Square Road
Epping, NH 03042

Re: 229 Mill Pond Road
Nottingham, NH 03290

ADMINISTRATIVE ORDER
No. WMD 02-005

February 7, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Hong Don Lee pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Hong Don Lee is an individual having a mailing address of 200 Nottingham Square Road, Epping, NH 03042.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1000 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100-300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Hong Don Lee is the owner of land at 229 Mill Pond Road, Nottingham, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3440, Page 810, and identified on Nottingham Tax Maps as map 0024, Lot 0139 ("Site").
4. On August 7, 2001, DES received a complaint alleging that hazardous waste and solid waste were being mismanaged at the Site.

5. On August 23, 2001, DES staff investigated the complaint by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Hong Don Lee's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.
6. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste with the hazardous waste number of NH01.
7. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."
8. RSA 147-A:2, IV defines "[hazardous waste] facility" as "a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste is generated."
9. During the Inspection, DES staff observed the following in the garage at the Site:
 - a. A metal container labeled "Liquid Rubber Cleaner- Combustible", with contents;
 - b. An open one-quart container labeled "Gear Oil", with contents;
 - c. A full one-gallon metal container labeled "Thread Cutting Oil";
 - d. An open 20-gallon drum with contents labeled "IH Gas Lubricant",
 - e. A sealed, unlabeled 20-gallon container with contents;
 - f. One open, unlabeled five-gallon container, approximately half full with a dark liquid;
 - g. One unsealed, green 55-gallon metal drum with contents labeled "Airthane PET95A Polyurethane Intermediate";
 - h. One black 55-gallon metal drum with used oil filters on top of the drum, labeled "Trispropanolamine 99";
 - i. An open three-gallon container half full with a dark liquid;
An unlabeled blue 55-gallon plastic drum, sealed, with contents;
 - k. Three 55-gallon drums with contents, one of which was not sealed;
 - l. An unlabeled 35-gallon drum, sealed, with contents;
 - m. Two sealed, unlabeled 55-gallon drums with contents;
 - n. Two sealed, unlabeled 20-gallon drums with contents;
 - o. A full one-gallon plastic container labeled "Muriatic Acid";
 - p. An open five-gallon plastic container half full with a green liquid;
 - q. Two one-gallon metal paint cans with contents, labeled "Primer Synthetic Enamel"; and
 - r. A one-gallon metal paint can with contents, labeled "Fast Low VOC Urethane".

10. During the Inspection, DES staff observed a partially full 275-gallon fuel oil tank in the basement of the house at the Site.
11. During the Inspection, DES staff observed several unlabeled 300- and 500-gallon fuel tanks. Some of the tanks had contents and one of the tanks was not sealed.
12. On August 28, 2001, DES staff met with John Terninko and David Lee, friends of Hong Don Lee, at the Site. Mr. Terninko and Mr. Lee informed DES staff that they have been assisting Hong Don Lee in matters pertaining to the Site.
13. Mr. Terninko and Mr. Lee informed DES staff that they believed that most of the containers in the garage contained used oil.
14. Mr. Terninko informed DES staff that Hong Don Lee had once rented the garage to an auto repair business.
15. Hong Don Lee is a generator of hazardous waste as defined by RSA 147-A:2, VI.
16. The Site is a hazardous waste facility as defined by RSA 147-A:2, IV.
17. Env-Wm 502.01 requires that all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Wm 401.01.
18. Several of the containers identified in C.9 have unknown contents.
19. During the Inspection, DES staff observed a trailer with yellow, green, and orange stripes along the sides at the Site. Inside the trailer, DES staff observed a full one-gallon container labeled "Refrigerant Oil" and a full one-gallon metal container labeled "Water Base White Pigment KILZ II".
20. As of the date of this Order, Hong Don Lee has not determined if the contents of the containers observed by DES staff during the Inspection are hazardous.
21. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."
22. During the Inspection, DES staff observed several areas of stained soil at the Site.
23. The stained soil observed by DES staff represents a potential discharge of hazardous waste that requires the responsible party to clean up the discharge. Hong Don Lee did not conduct a hazardous waste determination on the stained soil.

24. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.

25. During the Inspection, DES staff observed several unlabeled containers of used oil at the Site.

26. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.

27. During the Inspection, DES staff observed several containers of used oil at the Site which were not closed and sealed.

28. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

29. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product which is composed of wholly or partly of such materials as brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

30. During the Inspection, DES staff observed several automobile batteries in the garage at the Site.

31. During the Inspection, DES staff observed two automobile batteries and one unlabeled pressurized cylinder in the basement of the house at the Site.

32. During the Inspection, DES staff observed a bag of calcium sulfate in the house at the Site.

33. During the Inspection, DES staff observed the following at the Site:

- a. Approximately 100 tires over an embankment. Some tires were in the Little River Creek;
- b. Several unlabeled empty 300- and 500-gallon tanks; and
- c. Empty 55-gallon drums, restaurant equipment, screens, windows, empty five-gallon containers, carpet, "Black Beauty" sandblast grit, clothing, empty propane cylinders, metal, and blocks scattered around the Site.

34. During the Inspection, DES staff observed the following in the trailer identified in C.19: an automobile battery; plastic trash containers, various sized plastic containers, papers, and magazines.

35. The tires, batteries, empty containers, calcium sulfate, "Black Beauty" sandblast grit, pressurized cylinders, carpet, clothing, metal, windows, and screens observed by DES at the Site are solid waste as defined by RSA 149-M:4, XXII.

36. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."

37. A review of DES files shows that the Site is not approved to accept solid waste.

38. As a result of the August 28, 2001, meeting with Mr. Terninko and Mr. Lee, DES staff issued a Report of Initial Complaint Investigation ("RICI") to Mr. Terninko on behalf of Hong Don Lee advising him to label and seal all used oil containers; label and seal all containers of hazardous waste; containerize released material into appropriate, compatible containers; notify DES as a generator of hazardous waste, and remove all solid and hazardous waste to a permitted facility. Mr. Terninko signed the RICI on behalf of Hong Don Lee.

39. On August 30, 2001, Mr. Terninko informed DES staff via e-mail that he had properly disposed of the automobile batteries at the Town of Nottingham Transfer Station and that he would forward the disposal receipt to DES.

40. On September 6, 2001, Mr. Terninko informed DES staff via e-mail that he had labeled several of the containers of used oil with the words "Used Oil for Recycling."

41. On October 3, 2001, DES staff conducted a follow-up inspection of the Site and found that one 55-gallon drum in the garage had been labeled "Used Oil for Recycle" and the automobile batteries had been removed from the Site. No other violations were corrected.

42. On November 1, 2001, DES staff conducted a follow-up inspection of the Site. DES staff observed no change to the Site.

43. On November 28, 2001, DES staff conducted a follow-up inspection of the Site. DES staff observed the following:

- a. Two drums were now sealed and labeled "Used Oil for Recycle";
- b. At least ten unlabeled containers of various sizes with contents, two of which were not sealed, remained in the garage;
- c. An unlabeled, unsealed five-gallon bucket with contents which appeared to contain transmission fluid;
- d. An unlabeled, unsealed three-gallon container with contents which appeared to contain used oil;
- e. Approximately one dozen tires had been moved part way up the embankment; and
- f. Little or no change to the rest of the Site.

44. On December 18, 2001, DES staff conducted a follow-up inspection of the Site. DES staff observed the following:

- a. Several of the drums which were in the garage were no longer present;
- b. Approximately 80-90 tires had been moved to the top the embankment, however some tires remained below; and
- c. Little or no change had occurred to the rest of the Site.

45. On January 2, 2002, DES staff conducted a follow-up inspection of the Site and observed no change to the Site.

D. DETERMINATION OF VIOLATIONS

1. Hong Don Lee has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
2. Hong Don Lee has violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycle.
3. Hong Don Lee has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on containers and tanks with unknown contents as well as the stained soil.
4. Hong Don Lee has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.
5. Hong Don Lee has violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility.

E. ORDER

Based on the above findings, DES hereby orders Hong Don Lee as follows:

Immediately cease accepting or bringing any solid waste to the Site.

2. **Within 60 days** remove all solid waste at the Site to a permitted solid waste facility.
3. **Within 30 days** conduct a hazardous waste determination as specified in Env-Wm 502.01 on all containers with unknown contents as well as the stained soil. Submit the results together with any other supporting data, material safety data sheets, chemical analyses, or process knowledge to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste. Waste determined to be hazardous must be handled pursuant to the Hazardous Waste Rules.
4. **Within 30 days of receiving hazardous waste determination results**, remove all hazardous waste/used oil, and stained soil at the Site to a facility or facilities permitted to accept such wastes.

5. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
6. **Immediately** ensure that all containers of used oil destined for recycle are properly sealed at all times, except when used oil is being added to or removed from the containers as specified by Env-Wm 807.06(b)(5).
7. **Within 7 days** of the disposal of the solid waste, forward copies of disposal receipts to DES
8. **Within 7 days** of the disposal of the stained soil, forward copies of disposal receipts to DES
9. **Within 7 days** of the disposal of the hazardous waste/used oil forward copies of disposal receipts and/or hazardous waste manifests to DES.
10. Submit one written status report to DES **within 45 calendar days** of this Order and a second report **within 70 calendar days** of this Order, certifying that corrective measures have been implemented. Include in each report supporting documentation describing those measures taken to achieve compliance during the reporting period, together with copies of any written plans or proceedings developed.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Kenneth W. Marschner, Administrator
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-2456

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Hong Don Lee of his obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for civil and criminal penalties and administrative fines for violations of the statutes or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 147-A:14 and RSA 149-M:15 provide for civil forfeitures of up to \$50,000 and \$25,000, respectively for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not

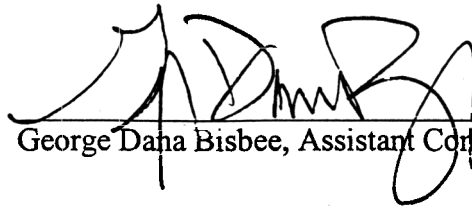
achieved, DES may take further enforcement action against Hong Don Lee by referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. Please be advised that DES reserves the right to pursue administrative penalties for the violations noted above.

Hong Don Lee remains obligated to comply with all applicable requirements, in particular the Hazardous Waste Rules and the Solid Waste Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Philip J. O'Brien, Ph.D., Director
Waste Management Division



George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7099 3400 0002 9769 7693

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Bill Evans, ORCB, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Nottingham, NH
Chief Gary Chase, Nottingham Fire Dept.
Rockingham County Registry of Deeds, Book 3440, Page 810